IN THE UNITED STATES DISTRICT COURT CENTRAL DIVISION, DISTRICT OF UTAH

GUY A. REAM, UEP/FLDS, : Civil No. 2:09-cv-00856

Plaintiffs, :

REPORT & RECOMMENDATION

vs. :

JUDGE CLARK WADDOUPS

DENISE LINDBERG, MARK SURTLIFF [sic], BRUCE WISAN and STATE OF UTAH,

MAGISTRATE JUDGE BROOKE C.

WELLS

Defendants.

Plaintiffs UEP, FLDS,¹ and Guy A. Ream acting *pro se* filed this action alleging violations of 42 U.S.C. § 1985. As stated in the complaint, Plaintiff Ream alleges that "the State Judiciary Denise P. Lindberg has permitted violation of all applicable Constitutional and Human Rights To obtain Ficticious [sic] Restatement of 1942 Trust Declairation [sic]."² Mr. Ream ultimately seeks a tax exempt status for the UEP Trust

¹An individual has a right to proceed in federal court either personally, pro se, or through representation by counsel. <u>Jones v Niagara Frontier Transp. Authority</u>, 722 F.2d 20, 22 (2d Cir. 1983)(citing, 28 U.S.C. §1654 (1976)). A corporation, however, "which is an artificial entity that can only act through agents, cannot proceed *pro se*." <u>Bell v. South Bay European Corp.</u>, 486 F. Supp 257, 259 (S.D.N.Y. 2007)(citing, Shapiro, Bernstein & Co. v. Continental Record Co., 386 F.2d 426, 427 (2d Cir. 1967)).

²Complaint, at pg. 3. Docket No. 3.

Estate, and \$10,000,000.00 in damages to compensate property loss, mental anguish and emotional distress.³ Because this court is barred from exercising jurisdiction over a case in which there may be ongoing state proceedings⁴ the court recommends that Mr. Ream's complaint be dismissed. Additionally, the Eleventh Amendment bars suit against any defendants acting in their official capacities.

Pursuant to 28 U.S.C. § 1915, the court granted Mr. Ream's motion to proceed without the payment of fees, *in forma pauperis*.⁵ The provisions of § 1915 state that the court "shall dismiss the case at any time if the court determines that— (B) the action or appeal— (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." Based thereupon, the court concludes that Mr. Ream's Complaint⁷ fails to state a claim upon which relief may be granted, and it seeks relief against defendants who are immune from suit.

A review of Mr. Ream's complaint reveals that his allegations arise from state court proceedings that are currently ongoing.⁸ Mr. Ream clearly indicates that the

³Complaint, pg. 6-7. Docket No. 3.

⁴Younger v Harris, 401 U.S. 37 (1971).

⁵Docket No. 2.

⁶28 U.S.C. 1915(e)(2) (2006).

⁷Docket No. 3.

⁸Complaint, pg. 5-6. Docket No. 3.

issues surrounding his claim involve a "pending lawsuit" in which the state court has not yet issued a ruling. This court does not have jurisdiction over a case in which there is an ongoing state action. Additionally, state officials sued for damages in their official capacities are not considered "persons" within the meaning of section 1983 because they assume the identity of the government that employs them. Thus, those causes of action brought against defendant Denise Lindberg and defendant Mark Shurtliff [sic] in their official capacities also fail because the Eleventh Amendment bars suit against such individuals in federal court.

DATED this 10th day of November, 2009.

HE COURT:

Brooke C. Wells

United States Magistrate Judge

⁹In turn, even if the court somehow determined that the state action was in fact not pending, under the *Rooker-Feldman* doctrine, the federal court does not have the power to reverse or modify state court judgments nor can it hear an appeal from a judgment rendered by a state court. *See,* Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-416 (1923); Bolden v. City of Topeka, 441 F.3d 1129, 1139 (10th Cir. 2006).

¹⁰Younger v Harris, 401 U.S. 37 (1971).

¹¹See, Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989).

¹² See, <u>Kentucky v Graham</u>, 473 U.S. 159, 167 n. 14 (1985); <u>Alabama v Pugh</u>, 438 U.S. 781, 782 (1978); Edelman v Jordan, 415 U.S. 651, 662-63 (1974).